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SUBJECT: SPAIN: TIP ACTION GUIDE TO COMBAT TIP (2008-2009)

REF: 10/20/08 ZERDECKI-BUCKNEBERG EMAIL WITH FINAL
ELECTRONIC ACTION PLAN

11. This is an action request (see para 5).

12. The 2008 Trafficking in Persons Report rates countries as Tier 1 when host governments are fully meeting the minimum standards to combat trafficking in persons (TIP) as defined by the Trafficking Victims Protection Act (TVPA). Remaining on Tier 1, however, is not guaranteed; governments must continue to demonstrate appreciable progress and continued full compliance with the minimum standards. All countries will be reassessed annually to determine whether they evidence satisfaction of all of the minimum standards. Tier 1 countries are subject to slipping to Tier 2 if they do not fully comply with the minimum standards, but do continue to show significant efforts.

13. Please keep in mind the TIP Report measures host government efforts. To be useful for tier placement purposes, there should be a concrete role or tangible value-added by a host government in activities by NGOs, international organizations, or posts.

14. The following explains steps the government needs to take in order to continue to fully comply with the Minimum Standards for the elimination of trafficking, and therefore qualify for a continued Tier 1 ranking, and offers suggestions to address specific areas of concern highlighted in the 2008 TIP Report. Legal standards are excerpted from the Trafficking Victims Protection Act, as amended. Implementation Principles are excerpted from guidance issued in 07 State 150188 (October 29, 2007) and are not specific to any country or region. Country-specific points are not exhaustive, but offer steps and possible ways to address specific areas of concern. The Department assesses government efforts each year. All governments must show concrete evidence of serious and sustained efforts in eliminating severe forms of trafficking from the previous year. Tier ranking determinations will be based on the government,s efforts to comply with the Minimum Standards to Combat TIP during the April 2008 - March 2009 reporting period.

15. Begin action request: Post is requested to explain to the host government the areas of specific concern noted in the TIP Report and suggested areas to continue to comply fully with the minimum standards (and thus continued Tier 1 placement). Post may offer steps below to the host government as possible ways to address specific areas of concern. While the list is not exhaustive, it should focus the host government on deficiencies in meeting the minimum standards and examples of ways to overcome them. As every year, the Department will weigh the government,s level of support and participation in reported activities, as well as the efficacy and sustainability of government actions, in light of its resources and capabilities.

Begin Action Guide and internal numbering.

11. Legal Framework: The government should criminally prohibit

TIP and punish such acts.

(A) For TIP crimes, punishment should be prescribed that is commensurate with that for grave crimes, such as forcible sexual assault.

(B) For TIP crimes, punishment should be prescribed that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense.

Implementation Guideline: At minimum, governments must criminalize and prescribe penalties for all forms of trafficking relevant in the country, including forced labor. This must include the elements of "severe forms of trafficking in persons" -- force, fraud, and coercion. Although desirable, this need not be accomplished through a comprehensive law, so long as relevant elements of trafficking, specifically including fraud/deception and coercion along with force, are covered by the country's laws.

Sanctions for sex trafficking should be on par with rape. The prescribed penalties for sex trafficking crimes or trafficking involving rape, kidnapping or death should be substantially similar to those for rape, taking into account the full range of sentences available. Consistent with the UN Convention Against Transnational Organized Crime, criminal penalties to meet this standard should include a maximum of at least four years deprivation of liberty, or a more severe

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penalty.

COMPLIANCE: The government was in full compliance as reported in the 2008 TIP Report.

Positive results that should be maintained:

-- Spain prohibits all forms of trafficking in persons though Article 318 of its Criminal and Penal Code. The prescribed penalty for sex trafficking is five to 15 years' imprisonment, and the penalty for labor trafficking is four to 12 years in prison. These are sufficiently stringent, and the penalties prescribed for sex trafficking are commensurate with the prescribed penalties for rape.

12. Prosecution and other Law Enforcement Efforts: The government should show serious and sustained efforts to combat TIP by vigorously investigating and prosecuting TIP acts, and convicting and sentencing persons responsible for such acts.

(A) The government must provide data regarding investigations, prosecutions, convictions, and sentences, consistent with its capacity to do so, or it shall be presumed not to have vigorously investigated, prosecuted, convicted or sentenced such acts.

Implementation Guideline: All governments, consistent with their capacity to do so, are required to submit full comprehensive data on trafficking enforcement actions, including length of sentences actually imposed on convicted traffickers, as evidence of their vigorous law enforcement efforts. Imposed sentences should involve significant jail time, with a majority of cases resulting in sentences on the order of one year imprisonment or more, but taking into account the severity of an individual's involvement in trafficking, imposed sentences for other grave crimes, and the judiciary's right to hand down punishments consistent with that country's laws. Convictions obtained under other criminal laws and statutes can be counted as trafficking if the government verifies that they involve trafficking offenses.

COMPLIANCE: The government was fully compliant as reported in the 2008 TIP Report.

Positive results that should be maintained and/or exceeded:

-- The Government of Spain demonstrated strong efforts to combat trafficking through law enforcement in the last year. The government implemented new legislation in 2007 that increased prescribed penalties for trafficking by two to six years in prison if the offender is found to be part of a criminal organization, and passed additional legislation in 2007 that allows Spanish courts to prosecute cases of trafficking that have occurred outside Spain's borders. During the reporting period, police arrested 530 individuals for sex trafficking and 161 for labor trafficking. Government officials prosecuted 102 trafficking cases, convicted 142 trafficking offenders, and imposed an average prison sentence of 4.6 years on those convicted. Over 67 percent of these sentences were greater than four years, and approximately 25 percent of the convictions resulted in a fine and/or suspended sentence. Spain announced in early 2008 that it would allot \$8.6 million to fund an anti-trafficking cooperation agreement with several Central American countries.

¶3. Victim Protection and Assistance: The government should demonstrate serious and sustained efforts to combat TIP by protecting TIP victims and encouraging their assistance in the investigation and prosecution of their traffickers. Protection should include:

(A) provisions for legal alternatives to victims, removal to countries in which they would face retribution or hardship.

(B) ensuring that victims are not inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts that were committed as a direct result of being trafficked.

Implementation Guideline: Critical factors considered in whether a country fully satisfies this part of the minimum standards are: (1) Formal, systematic screening procedures that proactively identify victims and guide law enforcement and other front line responders in the process of victim identification. (2) Shelter, health care, and counseling should be available to victims, allowing them to recount their trafficking experience to trained social counselors and law enforcement at a pace with minimal pressure. Shelter and care may be provided in cooperation with NGOs, but part of the government's responsibility includes funding and referral to NGOs providing services; to the best extent

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possible, trafficking victims should not be held in immigration detention centers, or other detention facilities.

Factors also considered and strongly recommended for favorable placement are: (1) Victim/witness protection, rights and confidentiality; i.e., governments should ensure that victims are provided with legal and other assistance and that, consistent with its domestic law, proceedings are not prejudicial to victims' rights, dignity or psychological well-being; and that victims are provided information in a language they understand. (2) Source and destination countries share responsibility in ensuring the safe, humane and, to the extent possible, voluntary repatriation/reintegration for victims. At a minimum, destination countries should contact a competent governmental body, NGO or IO in relevant source country to ensure that trafficked persons who return to their country of origin are provided with assistance and support necessary to their well-being. Trafficking victims should not be subjected to deportations or forced returns without safeguards or other measures to reduce the risk of hardship, retribution, or re-trafficking.

COMPLIANCE: The government was fully compliant as reported in the 2008 TIP Report.

Positive results that should be maintained and/or exceeded:

-- The government sustained impressive efforts to provide care for trafficking victims during the reporting period. In

2007, Spain increased funding to anti-trafficking NGOs providing care to victims. Spanish police continued informally to refer rescued victims to NGOs providing temporary shelter and rehabilitation services. Victims receive medical assistance, including emergency care, through the national health care system. The police identified 1,035 sex trafficking victims and 445 labor trafficking victims in 2007. The government encourages foreign victims to assist in trafficking investigations and prosecutions by providing work and residence permits to victims choosing to assist, giving them the option of either permanent residence status or funding to return to their own countries after the prosecution. There is no indication that victims are inappropriately incarcerated, fined or penalized for unlawful acts committed as a direct result of being trafficked.

Recommendation for measures to ensure that the country fully complies with Minimum Standards:

-- Establish a formal referral mechanism and procedures for proactive victim identification.

4. Prevention: The government should demonstrate serious and sustained efforts to combat TIP by adopting measures to prevent TIP, such as:

(A) steps to inform and educate the public, including potential victims, about the causes and consequences of TIP,

(B) measures to reduce the demand for commercial sex acts and for participation in international sex tourism by nationals of the country,

(C) measures to ensure that its nationals who are deployed abroad as part of a peacekeeping or other similar mission do not engage in or facilitate severe forms of trafficking in persons or exploit victims of such trafficking, and

(D) measures to prevent the use of forced labor or child labor in violation of international standards.

Implementation Guideline: The government should provide/fund a hotline or similar mechanism that offers victims and potential victims assistance/information about TIP. Per the new amendments to the Minimum Standards, starting with the April 2007 - March 2008 reporting period to be covered in the 2008 TIP Report, countries should, for example where applicable: (1) Reduce demand for commercial sex acts: Implement or support some form of visible awareness campaign that educates the clients of the sex trade (and potential sex trafficking victims) if the country has a significant sex trafficking problem, or a campaign that targets those who form the demand for victims of forced labor about the nature of the relevant form of TIP. Nations with legalized prostitution should make additional efforts to identify TIP victims proactively among those in prostitution in the legalized sex trade. This includes the systematic and sensitive screening of persons in the legalized sex trade. (2) Address child sex tourism: Countries that have a significant number of nationals traveling abroad as child sex tourists should undertake an awareness campaign that targets tourists traveling to known child sex tourism destinations. (3) Address trafficking and exploitation committed by

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multinational peacekeepers: Governments with more than 100 troops on peacekeeping or other similar missions abroad should provide anti-TIP training for these troops (directly or through multilateral efforts), and should investigate and, if appropriate, prosecute any allegations of trafficking crimes or crimes of facilitating trafficking or exploiting trafficking victims committed by these troops abroad and referred to it by the UN or another competent organization.

COMPLIANCE: The government was fully compliant as reported in the 2008 TIP Report.

Positive results that should be maintained and/or exceeded:

-- Spain sustained efforts to raise awareness about trafficking over the past year. The Spanish government instituted a toll-free hotline that offers trafficking victims and potential victims information. Regional offices of the national police conduct quarterly reviews to set goals for combating trafficking and to assess progress. Spain's draft National Integral Plan Against Trafficking in Persons includes a government pledge of almost \$45 million per year and the dedication of over 200 new police and civil guards to its enforcement. Local governments continued demand-reduction campaigns. The city of Madrid targeted potential sex solicitors with the slogan, &Do not contribute to the perpetuation of 21st Century Slavery.⁸ Spanish military troops deploying abroad as international peacekeepers received anti-trafficking training through participation in multilateral training efforts. Under the motto &There Are No Excuses,⁸ the Spanish government warned travelers against child sex tourism. In January 2008, the Ministries of Labor and Social Affairs and Foreign Affairs teamed up with Save the Children to host an international conference on child trafficking, which addressed child sex tourism.

Recommendation for measures to ensure that the country fully complies with Minimum Standards:

-- Continue anti-trafficking awareness initiatives aimed at educating clients of the commercial sex trade about the causes and consequences of trafficking.

-- Implement a national action plan to combat trafficking.

-- Expand child sex tourism demand reduction campaigns.

-- Continue to seek active participation from NGOs on anti-trafficking efforts, including policy initiatives.

15. **Corruption and Official Complicity:** The government should vigorously investigate, prosecute, convict, and sentence public officials who participate in or facilitate TIP, and take all appropriate measures against officials who condone such trafficking.

(A) This should include nationals of the country who are deployed abroad as part of a peacekeeping or other similar mission who engage in or facilitate severe forms of trafficking in persons or exploit victims of such trafficking.

(B) The government must provide data regarding such investigations, prosecutions, convictions, and sentences, or it shall be presumed not to have vigorously investigated, prosecuted, convicted, or sentenced such acts.

Implementation Principle: Governments, consistent with their capacity to do so, must provide full comprehensive data on actions taken against TIP-related complicity. Information on general government corruption does not satisfy this minimum standard, except in cases in which specific cases of complicity are not reported by the government or known to the USG, but where there is a reasonable probability of such complicity within the wider context of generalized corruption in that country.

COMPLIANCE: There were no specific cases of complicity reported by the government in the 2008 TIP Report.

Recommendation for measures to ensure that the country fully complies with Minimum Standards:

-- Continue to vigorously investigate and prosecute trafficking-related corruption at all levels of law enforcement. Share comprehensive data on investigations, prosecutions, and convictions of complicit officials, and the lengths of sentences imposed on those convicted, if specific cases of complicity have occurred.

End Action Guide and internal numbering.

¶6. The Department appreciates Post,s continued efforts to address trafficking in persons issues.

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